Testimony of Dr. James Thomas Tucker

Voting Rights Consultant for the National Association of Latino Elected and appointed Officials (NALEO) Educational Fund
and
Adjunct Professor at the Barrett Honors College at Arizona State University

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Subcommittee on the Constitution

Legislative Hearing on H.R. 9,
A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II
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Mr. Chairman and Members of the Subcommittee, thank you for your invitation to testify on H.R. 9, the Fannie Lou Hamer, Rosa Parks, and Corretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("VRARA"). I want to commend Chairman Sensenbrenner and Ranking Member Conyers of the Judiciary Committee, and Chairman Chabot, Ranking Member Nadler, and Mr. Watt, Ms. Sanchez, Mr. Lewis, and Mr. Honda for your leadership and support for this legislation. The Voting Rights Act is the crown jewel of American civil rights laws. The importance of renewing and restoring the Act to the original Congressional intent has not been lost on Members from both Parties in the House and the Senate. Just two days ago, we witnessed the historic bicameral and bipartisan drop of H.R. 9. Last week, Chairman Sensenbrenner and Ranking Member Conyers introduced a substantial record of 8,000 pages of testimony documenting extensive discrimination and the continuing need for the expiring provisions of the Voting Rights Act. While progress has been made to eliminate voting discrimination in this country, much work remains left to do. For that reason, I urge the distinguished Members to pass H.R. 9 and ensure that millions of American citizens continue to have equal access to their fundamental right to vote.

I am a voting rights consultant to the National Association of Latino Elected and appointed Officials (NALEO) Educational Fund and an Adjunct Professor at the Barrett Honors College at Arizona State University. I hold a Doctor of the Science of Laws (or S.J.D.) degree from the University of Pennsylvania. I previously worked as a senior trial attorney in the Justice Department's Voting Section, in which a substantial amount of my work focused on Section 203 enforcement and federal observer coverage. I teamed with Dr. Rodolfo Espino, a Professor in ASU's Department of Political Science who holds a Ph.D. in Political Science from the University of Wisconsin-Madison, to co-direct a nationwide study of minority language assistance practices in public elections that was accepted into the House record. I presently am working with Peter Zamora, an attorney with the Mexican-American Legal Defense and Education Fund (MALDEF), to document successful educational discrimination cases and English as a Second Language (ESL) waiting times in nearly two dozen cities across the United States. I will discuss some of our findings today.

Although my comments will focus primarily on Sections 4(f)(4) and 203, I want to express my strongest support for the other provisions of H.R. 9. The bill restores Section 5 to the original Congressional intent by correcting misconstructions by the United States Supreme Court in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*. The VRARA makes it clear that Section 5 prohibits intentionally discriminatory voting practices and voting changes that prevent minority voters from electing their chosen candidates. The bill also updates the federal observer provisions to reflect the manner in which those provisions have been used since 1982. Finally, H.R. 9 strengthens the Voting Rights Act by providing for recovery of reasonable expert witness fees in litigation to enforce the Act. Section 5 and the private attorneys' general provision of the

Voting Rights Act have played a critical role in making the guarantees of the Fourteenth and Fifteenth Amendments a reality for all Americans. The VRARA will ensure that ongoing voting discrimination and the vestiges of past voting discrimination are removed root and branch from our Nation's landscape.

The language assistance provisions of the Voting Rights Act received strong bipartisan support each time Congress previously considered them in 1975, 1982, and 1992, and this reauthorization process has been no different. As Senator Orrin Hatch observed during the 1992 hearings, "[t]he right to vote is one of the most fundamental of human rights. Unless government assures access to the ballot box, citizenship is just an empty promise. Section 203 of the Voting Rights Act, containing bilingual election requirements, is an integral part of our government's assurance that Americans do have such access."[1]

It has long been established that Congress has the authority to remove barriers to political participation by language minority U.S. citizens. In *Katzenbach v. Morgan*,[2] the United States Supreme Court upheld Section 4(e) of the Act, which provides for language assistance for "persons educated in American-flag schools in which the predominant classroom language was other than English."[3] The State of New York argued that Section 4(e) of the Act was unconstitutional as applied to New York, which had passed an English language requirement for voting to give language minorities an incentive to learn English. The Court rejected that assertion, finding that Congress may have "questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise."[4]

Katzenbach upheld the language assistance requirements as a valid exercise of congressional enforcement powers under the Fourteenth and Fifteenth Amendments, which the Court recognized give "the same broad powers expressed in the Necessary and Proper Clause."[5]

In 1975, Congress relied upon Section 4(e) as the foundation for Sections 4(f)(4) and 203. Congress noted its constitutional exercise of its enforcement powers by citing *Katzenbach* and the Court's decision in *Meyer v. Nebraska*, a 1923 case in which the Court struck down a prohibition of teaching languages other than English in public schools. As the Supreme Court observed in *Meyer*, "the protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue."[6] Congress agreed with this reasoning in enacting Sections 4(f)(4) and 203.

Section 7 of H.R. 9 provides for a straight reauthorization of Sections 4(f)(4) and 203 of the Voting Rights Act for twenty-five years, until August 6, 2032. The provisions apply to four language groups: Alaska Natives; American Indians; persons of Spanish Heritage; and Asian Americans,[7] as well as the distinct languages and dialects within these language groups.[8] Section 2 of the bill outlines substantial evidence of continued discrimination against language minorities that supports the twenty-five year reauthorization. Equally important, the bill reaffirms the findings in Section 203(a) of the Voting Rights Act, which states:

> The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group

> citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation.[9]

There is a substantial record of documented discrimination in voting and education that supports maintaining the protections in Sections 4(f)(4) and 203 of the Voting Rights Act for the four covered language groups. Other language groups have not been included because there is no evidence that they have experienced similar difficulties in voting.[10]

Jurisdictions are selected for coverage through two separate triggering formulas. Under Section 4(f)(4) of the Act, a jurisdiction is covered if three criteria are met as of November 1, 1972: (1) over five percent of voting age citizens were members of a single language group; (2) the jurisdiction used English-only election materials; and (3) less than fifty percent of voting age citizens were registered to vote or fewer than fifty percent voted in the 1972 Presidential election.[11] This trigger covers jurisdictions that have experienced "more serious problems" of voting discrimination against language minority citizens.[12]

Jurisdictions covered under Section 4(f)(4) must provide assistance in the language triggering coverage and are subject to the Act's special provisions, including Section 5 preclearance and federal observer coverage. Section 4(f)(4) coverage applies in three states (Alaska for Alaska Natives, and Arizona and Texas for Spanish Heritage) and nineteen counties or townships in six additional states.[13] Bailout under Section 4(a) of the Voting Rights Act allows jurisdictions that have eliminated voting discrimination to be removed from coverage

under Section 4(f)(4). Covered counties in Colorado, New Mexico, and Oklahoma have bailed out pursuant to Section 4(a) of the Voting Rights Act.[14]

During the oversight hearings, this Committee received substantial evidence documenting voting discrimination and the continuing need for Section 4(f)(4) coverage in the remaining jurisdictions. I will briefly highlight some of those findings in the three states covered statewide.

The need for language assistance in Alaska remains high, but is largely unmet. Residents of nearly 200 Native villages accessible only by plane live in abject poverty, have high unemployment rates, and the lowest levels of education.[15] These Native Alaskans speak twenty different languages, many with unique regional dialects, and they have a high level of limited-English proficiency.[16] Educational disparities continue to be prevalent, including 80.5 percent of Alaska Native graduating seniors who were not proficient in reading comprehension, failure rates on standardized tests that were more than 20 percent higher than non-Native students, and graduation rates that lag more than 15 percent behind the statewide average.[17] There is substantial non-compliance with Section 203, including lack of oral language assistance, no voter outreach, the absence of language assistance by telephone, and the failure to provide materials in the written Iñupiaq and Yup'ik languages.[18] The "largely monolingual elections in Alaska have clearly impacted Alaska Natives' ability to exercise their right to vote."[19] Voter turnout in these isolated Native communities trails statewide turnout by nearly seventeen percent.[20]

Arizona's record since 1982 also demonstrates the continuing need for Section 4(f)(4) coverage. Since that time, the Department of Justice has objected to four statewide redistricting

plans because of their discriminatory impact on language minority citizens, including one in the 1980s, two in the 1990s, and one in 2002.[21] Over 80 percent of all Section 5 objections in Arizona have occurred since 1982.[22] The Department of Justice has interposed objections to discriminatory voting changes in nearly half of Arizona's counties since the last reauthorization.[23] Since 1982, more than 1200 federal observers have been deployed to Apache, Navajo, and Yuma Counties, identifying substantial non-compliance in the availability and quality of language assistance to American Indian and Latino voting-age citizens.[24] In 1989 and 1994, the Department of Justice brought successful cases against the State of Arizona and Apache, Coconino, and Navajo Counties for denying American Indian voters access to the political process.[25] As recently as 2002, the Department of Justice identified significant deficiencies in the availability and quality of language assistance offered to American Indian voters in Apache County. Voter registration and turnout among American Indian and Latino voters continues to climb, and the number of Latino elected officials in Arizona has nearly quadrupled from 85 in 1973 to 373 in January 2005.[26] Nevertheless, the recent documented voting discrimination in Arizona demonstrates that Section 4(f)(4) coverage continues to be needed.

Congress originally targeted the language assistance provisions to protect Spanish-language minorities in Texas, who had experienced a well-documented history of voting discrimination.[27] The record demonstrates that Section 4(f)(4) coverage continues to be necessary to protect voting age citizens in Texas, including 22.4 percent who are Latino, 12.3 percent who are African-American, 2.0 percent who are Asian, and 1.3 percent who are American Indian.[28] Since 1982, the Department of Justice (DOJ) has issued at least 105

objections to proposed electoral changes in Texas (including ten statewide objections), which is the second highest total of Section 5 objections, trailing only Mississippi.[29] Since 1982, more successful Section 5 cases have been brought in Texas than any other state (at least 29), and Texas leads the nation in the number of discriminatory voting changes withdrawn after submission to DOJ (at least 54).[30] Since 1982, Texas also has the second highest number of successful Section 2 cases (at least 274), trailing only Alabama.[31]

Numbers alone do not tell the whole story of how much Section 4(f)(4) coverage has made a difference in Texas. In August 2003, weeks before a September election, Section 5 prevented Bexar County (where San Antonio is located) from eliminating five early polling places that served predominantly Latino neighborhoods, an act that would have left many Latino voters without convenient access to the polls. In 2002, Harris County (where Houston is located) failed to provide language assistance to its Vietnamese voters. After Asian-American organizations and the Department of Justice put pressure on the county to offer language assistance to Vietnamese voters, Harris County saw its first and only Vietnamese-American candidate win a legislative seat. In 2002, Section 5 prevented Seguin, Texas from dismantling a Latino city council district and then from canceling the candidate-filing period to prevent Latino candidates from running in the district and winning a majority of seats. Section 4(f)(4) has had a significant impact on the ability of racial, ethnic, and language minorities to participate in Texas, but recent voting discrimination shows it still has far to go.

Under Section 203 of the Act, a jurisdiction is covered if the Director of the Census determines that two criteria are met. First, the limited-English proficient citizens of voting age in

a single language group: (a) number more than 10,000; (b) comprise more than five percent of all citizens of voting age; or (c) comprise more than five percent of all American Indians of a single language group residing on an Indian reservation. Second, the illiteracy rate of the language minority citizens must exceed the national illiteracy rate.[32] A person is "limited-English proficient" (or LEP) if he or she speaks English "less than very well" and would need assistance to participate in the political process effectively.[33]

H.R. 9 maintains the existing Section 203 coverage formula. It also updates the data used for coverage determinations to reflect changes in how the Census Bureau collects language ability data. In future censuses, the existing method of collection, decennial long-form data, will be replaced by the American Community Survey, which will "provide long-form type information every year instead of once in ten years."[34] The VRARA responds to this data collection change by providing that coverage determinations under Section 203(b) will be made using "the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data."[35] The bill otherwise leaves Section 203(b)(4) unchanged, ensuring that coverage determinations will continue to "be effective upon publication in the Federal Register and shall not be subject to review in any court."[36] The bill also continues to provide the Director of the Census with the flexibility to update census data and publish Section 203(c) coverage determinations more frequently, as new data becomes available.[37]

Jurisdictions that are covered under Section 203 of the Act must provide written materials and assistance in the covered language. Generally, written materials do not have to be provided

for historically unwritten Alaska Native or American Indian languages.[38] After the most recent Census Department determinations on July 26, 2002, five states are covered in their entirety (Alaska for Alaska Natives, and Arizona, California, New Mexico, and Texas for Spanish Heritage) and twenty-six states are partially covered in a total of twenty-nine languages.[39] Language assistance must be provided under either Section 4(f)(4) or Section 203 in 505 jurisdictions, which includes all counties or parishes, and those townships or boroughs specifically identified for coverage.[40]

In 1992, when the language assistance provisions were last reauthorized, Congress acknowledged the substantial record of educational discrimination against the covered language minority groups. Congress did so by recognizing two ways in which this discrimination manifested itself: "present barriers to equal educational opportunities" and "the current effect that past educational discrimination has on today's Hispanic adult population."[41] The evidence shows that each of these education barriers continue to be present, resulting in "a deleterious effect on the ability of language minorities to become English proficient and literate."[42]

Estimates vary on the number of English Language Learner (ELL) students enrolled in public schools, ranging from about three million students in 1999-2000[43] to nearly 3.5 million [44] or even four million for the same period.[45] The actual number may be considerably higher because of an undercount of American Indian and Alaska Native students resulting from the Department of Education's definition of "LEP student."[46] Nearly three-quarters of all of these students are native-born U.S. citizens.[47] The top six states with ELL students were California with 1,511,646, Texas with 570,022, Florida with 254,517, New York with 239,097, Illinois with

140,528, and Arizona with 135,248.[48] Each of these six states is covered in whole (California, Texas, and Arizona) or in part by the language assistance provisions of the Voting Rights Act. ELL students enrolled in public schools lag far behind native-English speakers on standardized tests. According to one of the OELA studies, LEP students are twice as likely to fail graduation tests as native-English speakers.[49]

Since the language assistance provisions were enacted in 1975, numerous state and local jurisdictions have been found liable for denying equal educational opportunities to non-English speaking students in the public schools. In the landmark case of *Lau v. Nichols*, the United States Supreme Court held that an English-only curriculum violated Title VI of the Civil Rights Act of 1964 where it deprived Chinese-speaking students in San Francisco of equal educational opportunities.[50] Many of the post-1975 cases have been brought under the authority of *Lau* and its progeny.[51] Other statutory bases for these cases have included the Section 1703(f) of the Equal Educational Opportunity Act (EEOA)[52] and its implementing regulations,[53] the Education for All Handicapped Children Act of 1975, the Bilingual Education Act and Title VII of the Elementary and Secondary Education Act of 1968, Section 504 of the Vocational Rehabilitation Act of 1973, numerous sections of the Individuals with Disabilities Education Act (IDEA), and Title III of the No Child Left Behind Act of 2002 (NCLB), among others.

Unfortunately, the unequal educational opportunities identified in *Lau* remain in much of the United States. Since 1975, at least twenty-four successful educational discrimination cases have been brought on behalf of ELL students in fifteen states, fourteen of which are presently covered in whole or in part by the language assistance provisions.[54] Since 1992, when the

language assistance provisions were last reauthorized, at least ten ELL cases have been brought or plaintiffs have had additional relief granted under existing court decrees. In some cases, such as *United States v. State of Texas*,[55] requests for post-judgment relief for non-compliance with court orders remain pending. Elsewhere, cases brought on behalf of ELL students remain pending, including one in Alaska[56] and one in Illinois,[57] among others. Consent decrees or court orders remain in effect for ELL students statewide in Arizona[58] and Florida,[59] and in the cities of Boston,[60] Denver,[61] and Seattle,[62] each of which is covered by the language assistance provisions. I will briefly discuss some of these decisions and how they impact the ability of covered language minority voters to participate effectively in the political process.

In a 1999 decision, an Alaska Superior Court concluded that Alaska has a dual, arbitrary, unconstitutional, and racially discriminatory system for funding school facilities, which impacted Alaska Native and American Indian English Language Learner (ELL) students enrolled in the public schools.[63]

In *Y.S. v. School District of Philadelphia*,[64] a successful class action was brought on behalf of 6,800 Asian ELL students. Y, one of three named plaintiffs, was a Cambodian refugee enrolled in English-only ESL courses who was placed in a class for mentally handicapped students after failing to make progress for three years. The 1986 consent decree required the school district to review all placements of ELL Asian students, including assessment and communication in their native language, revisions to ESL curriculum, recruitment and training of ELL instructors fluent in Asian languages, and all communications with parents in their native

languages. The decree was extended by stipulation in 2001 because of the continuing need for judicial oversight.

In *People Who Care v. Rockford Board of Education School District # 205*,[65] a federal court held that the school district discriminated against Spanish-speaking ELL students by providing unequal educational opportunities. The Court cited substantial evidence of educational discrimination against ELL students gathered by the Office of Civil Rights (OCR) of the United States Department of Education. Among other violations, the school district failed "to adequately identify and assess students who were in need of bilingual services" and segregated ELL students from the rest of the student population.

The December 2005 decision in *Flores v. Arizona* illustrates the impact that unequal educational opportunities have had on 175,000 ELL students enrolled in Arizona's public schools.[66] As the federal court found, the case reflected "a backdrop of state inaction, existing in 1992 when Plaintiffs filed the class action law suit and continuing through the duration of the case."[67] The plaintiffs sued Arizona under *Lau* for failing to provide a program of instruction that would allow the ELL students to become proficient in speaking, understanding, reading, and writing English, while enabling them to master the standard academic curriculum as required of all students. The plaintiffs challenged the State's funding, administration and oversight of the public school system in districts enrolling predominantly low-income minority children because the State allowed these schools to provide less educational benefits and opportunities than those available to students who attend predominantly Anglo-schools.[68]

In January 2000, the federal court issued a declaratory judgment against the State of Arizona following a bench trial. The *Flores* Court found that the State's minimum base level for funding *Lau* programs was arbitrary and capricious and bore no relation to the actual funding needed to ensure that LEP students are achieving mastery of the State's specified "essential skills." The Court identified several *Lau* program deficiencies in support of its judgment:

- Too many students in a classroom.
- Not enough classrooms.
- Not enough qualified teachers, including teachers to teach ELL and bilingual teachers to teach content area studies.
- Not enough teacher aides.
- An inadequate tutoring program, and
- Insufficient teaching materials for both ELL classes and content area courses.

The Court concluded that these "deficiencies are not the result of an inadequate model…. The problem is the state's inadequate funding to support the model."[69] The Court made this finding based on a 1987-88 cost study that showed it cost approximately $450.00 per LEP student – three times what the State actually budgeted – to provide *Lau* program instruction.[70]

In December 2005, over five years after the court granted post-judgment relief and over thirteen years after the action was filed, the federal court cited the State of Arizona for contempt. At that time, the State Legislature's own study commissioned by the National Conference of State Legislatures (NCSL) showed that Arizona needed to spend approximately four and one-half times the $150 per ELL student in 2001, and nearly twice the currently budgeted $360 per ELL student.[71] In rendering its contempt citation, the Court observed, "thousands of children

who have now been impacted by the State's continued inadequate funding of ELL programs had yet to begin school when Plaintiffs filed this case."[72] The Court strongly criticized Arizona's intransigence:

> The Court can only imagine how many students have started school since Judge Marquez entered the Order in February 2000, declaring these programs were inadequately funded in an arbitrary and capricious manner that violates ELL students' rights under the EEOA. How many students may have stopped school, by dropping out or failing because of foot-dragging by the State and its failure to comply with the original Order and compliance directives such as the Order issued on January 28, 2005? Plaintiffs are no longer inclined to depend on the good faith of the Defendants or to have faith that without some extraordinary pressure, the State will ever comply with the mandates of the respective Orders issued by this Court.[73]

The Court ordered that if Arizona did not comply with its earlier decrees within 15 calendar days after the beginning of the 2006 legislative session, it would impose a fine of at least $500,000 per day.[74] On January 24, 2006, Arizona failed to meet the court deadline and had accumulating $20 million in fines though the end of February 2006, which has been channeled directly into ELL school programs.[75]

The discriminatory impact of these unequal educational opportunities are illustrated in low test scores and high dropout rates documented in a 2005 study by Arizona's three public universities. Eighty-three percent of juniors and sophomores who qualify as English learners failed key portions of the AIMS test[76] such as reading and writing. While about half of non-

Hispanic whites have passed all of the AIMS sections, more than three-quarters of Latinos, African-Americans, and American Indians have not. Sixty-five percent of non-Hispanic whites passed the math section, twice the percentage of African-American and Hispanic students. Only about 25 percent of American Indian students have passed the math section. Of the 13,279 students who continue to score in the lowest of four possible categories, 70 percent of those students were minorities. In fifth-grade reading, 70 percent of non-Hispanic white students met or exceeded the AIMS standard, compared with only 42 percent of Hispanic students. In eighth-grade math, 29 percent of non-Hispanic white students met or exceeded the AIMS standard, compared with 10 percent of Hispanic students. Language minorities in Arizona have not fared any better on national tests. According to the 2005 results of the National Assessment of Educational Progress test administered to Arizona's students, "the test results were grim for poor and minority children. More than 60 percent of Arizona's poor, African-American, and Latino kids in the fourth grade scored below grade level in reading, double the percent of White and wealthier kids falling behind."[77]

Educational discrimination is compounded by the absence of sufficient adult ESL programs in most of the covered jurisdictions.[78]

- In Albuquerque, New Mexico, Catholic Charities, the largest adult ESL provider, reports that approximately 1,000 people on their waiting list, with an average waiting time of about 12 months.[79]
- In Boston, the average waiting time is 6-9 months, but some adults have to wait as much as 2-3 years. There is only capacity for about 16,000 adult ESL students among current providers. As of April 24, 2006, there were at least 16,725 adults

on ESL waiting lists in Boston, which is an undercount of the actual number of adults who cannot get into programs.[80]

- In the five-county Denver metro area, adult ESL programs working with the Colorado Department of Education had an enrollment of 4,721 adult ESL learners in FY 2005, or 50% of the total Colorado ESL population. Of the seven programs reporting waiting list data, waiting times ranged from two weeks to two months.[81]
- In Las Vegas, the Community College of Southern Nevada, the largest ESL provider in Nevada, reported that the average waiting time for adult ESL classes is from one to four months.[82]
- In the metropolitan New York City region, the need for adult ESL courses is estimated to be one million, but only 41,347 adults were able to enroll in over one hundred providers in 2005 because of inadequate numbers of classes. Most adult ESL programs no longer keep waiting lists because of the extreme demand, but use lottery systems in which at least three out of every four adults are turned away. In 2001, the Literacy Assistance Center surveyed the few providers that maintained waiting lists, and found that there 12,000 adults on the lists, with an average waiting time of at least six months.[83]
- In Phoenix, Rio Salado Community College, which is the largest adult ESL provider in Arizona, reports a waiting list of over 1,000 people with a waiting time of up to 18 months for the highest-demand evening classes.[84] Comprehensive adult ESL programs, such as the intensive two-year program offered by Unlimited Potential for women, has a three year waiting list.[85]

- In Rhode Island, according to the Office of Adult Education at the Rhode Island Department of Elementary and Secondary Education, in March 2006 its 35 adult ESL service providers reported that 1,760 adults were on a waiting list, or one person for every learner enrolled in a program. Over half of all adults reported to be on waiting lists had been waiting for 12 months or more.[86] Similarly, the International Institute of Rhode Island, which serves about 850-900 adult ESL students each year, reported a waiting list of approximately 750 adults waiting an average of at least 12 months. The waiting time for all Rhode Island adult ESL providers was as much as two years until 2004-2005, when Rhode Island Governor Donald Carcieri increased state funding for adult ESL programs by $1.4 million.[87] Nevertheless, demand continues to increase, adding to the waiting lists.

The ESL waiting list data highlights that LEP adults are extremely motivated to learn English and become fully assimilated into American society. According to ESL providers, the average adult ESL student is "the working poor," holding two jobs, supporting a family, and learning English in the few hours available to them in the evenings. There is "no shortage of motivation" to learn.[88] Instead, the extreme demands for ESL services far exceed the available supply of open classes. One ESL director in Jackson Heights/Queens Borough, New York, explained that her program had to stop using waiting lists about ten years ago. Her program used to be first come/first served at the Queens Public Library, and applicants would sleep out for days in front of the building to get into classes, with near-riots breaking out when people jumped places. Many programs in New York City now use lottery systems every two or three months. It is commonplace for LEP adults to not be selected even after five or six lotteries, causing them to come in with tears to beg and plead with the program director to let them in, only to be told,

"there's no more room, there's no more space." Existing adult ESL programs only begin to "scratch the surface" of responding to this extreme demand.[89]

Even where LEP adults are able to enroll in ESL programs, they cannot learn English overnight. Most ESL providers offer four or five levels of English instruction. It can take several years for LEP students to even acquire spoken English language and literacy skills equal to that of someone with a fifth grade education, which is still functionally illiterate. Native English speakers frequently struggle to understand complex ballot questions. In 1992, Congress documented that the absence of oral language assistance and information in their own language is devastating to political participation on ballot questions by language minority citizens.[90] The need for language assistance on ballot questions is especially important because of the growing number of propositions directly impacting covered language minority citizens.

As Congress found in 1975 and reaffirmed in 1992, today the unequal educational opportunities afforded to covered language minority groups continues to result "in high illiteracy and low voting participation."[91] Among the 403 language groups for which Census data is available in the 367 covered political subdivisions, an average of 13.1 percent of citizens of voting age are LEP in the languages triggering coverage.[92] Among these LEP voting age citizens, the average illiteracy rate is nearly fourteen times the national illiteracy rate.[93] Elderly American Indians and Alaska Natives living on isolated reservations have illiteracy rates approaching 50 percent or more.[94] The barriers posed by educational discrimination, language and the absence of sufficient ESL classes, and high illiteracy result in extremely depressed voter participation. According to the Census Bureau, in the November 2004 Presidential Election,

Hispanic voting-age U.S. citizens had a registration rate of 57.9 percent and Asian voting-age U.S. citizens had a registration rate of only 52.5 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens.[95]

H.R. 9 maintains the existing bailout provision from Section 203 coverage. Section 203(d) of the Act provides that a covered jurisdiction may bailout from coverage under the bilingual election provisions if it can demonstrate "that the illiteracy rate of the applicable language minority group" that triggered coverage "is equal to or less than the national illiteracy rate."[96] "Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities," this bailout procedure "rewards" jurisdictions that are able to remove these barriers.[97] Unfortunately, as the evidence above demonstrates, covered jurisdictions have fallen far short of eliminating the crushing burden of illiteracy. The extreme need for language assistance in voting in the face of educational neglect and discrimination provides a compelling basis upon which to renew Section 203 for an additional twenty-five years.

Finally, I will close by briefly summarizing some of the cost data I previously provided to this Committee. Where implemented properly, language assistance accounts for only a small fraction of total elections costs, if any at all. In our 2005 study of election officials in the 31 states covered by Section 203, a majority of jurisdictions reported incurring no additional costs for either oral or written language assistance, with most of the remaining jurisdictions incurring additional expenses of less than 1.5 percent for oral language assistance and less than 3 percent for written language assistance.[98] These findings are consistent with two GAO studies in 1984

and 1997.[99] Election officials attribute the lack of additional costs to several factors. Many report hiring bilingual poll workers who are paid the same wages as other poll workers. Jurisdictions with Alaska Native and American Indian voters report that bilingual materials are not provided because the covered languages are unwritten. Several jurisdictions providing bilingual written materials use election officials or community volunteers to translate materials, resulting in no additional costs. In many cases, printing costs do not increase as a result of having bilingual written materials. A number of jurisdictions in New Mexico and Texas report that state laws have language assistance requirements similar to Section 203, resulting in no additional cost for federal compliance.

An overwhelming majority of election officials report that they support the language assistance provisions. Of 254 jurisdictions that responded to the question, 71.3 percent (181 jurisdictions) think that the federal language assistance provisions should remain in effect for public elections.[100] The reason is obvious. There is a substantial need for language assistance to help LEP U.S. citizens overcome language and illiteracy barriers to participate fully and effectively in American political life. For these reasons, I recommend in the strongest terms that without delay, the House pass H.R. 9 without amendment, to ensure the continued protection of the right to vote for all Americans. Thank you very much for your attention. I will welcome the opportunity to answer any questions you may have.

Endotes

[1] *Voting Rights Act Language Assistance Amendments of 1992: Hearings on S. 2236 Before the Subcomm. On the Constitution of the Senate Comm. On the Judiciary* [1992 hearings], 102d Cong., 2d Sess., S. HRG. 102-1066, at 134 (1992) (statement of Sen. Hatch).

[2] 384 U.S. 641 (1966).

[3] 42 U.S.C. § 1973b(e)(1).

[4] 384 U.S. at 658.

[5] *Id.* at 650.

[6] 262 U.S. 390, 401 (1923).

[7] *See* 42 U.S.C. §§ 1973l(c)(3), 1973aa-1a(e).

[8] *See* 121 CONG. REC. H4716 (daily ed. June 2, 1975) (statement of Rep. Edwards). When the 1975 amendments were enacted, the Bureau of the Census defined the language minority groups in the following manner:

> [T]he category of Asian American includes persons who indicated their race as Japanese, Chinese, Filipino, or Korean. The category of American Indian includes persons who indicated their race as Indian (American) or who did not indicate a specific race category but reported the name of an Indian tribe. The population designated as Alaska Native includes persons residing in Alaska who identified themselves as Aleut, Eskimo or American Indian. Persons of Spanish heritage are identified as (a) 'persons of Spanish language' in 42 States and the District of Columbia; (b) 'persons of Spanish language' as well as 'persons of Spanish surname' in Arizona, California, Colorado, Mew Mexico, and Texas; and (c) 'persons of Puerto Rican birth or parentage in New Jersey, New York, and Pennsylvania.'"

S. REP. NO. 94-295 at 24 n.14, *reprinted in* 1975 U.S.C.C.A.N. 790-91 n.14 (quoting Letter from Meyer Zitter, Chief, Population Division, Bureau of the Census, to House Judiciary Committee, Apr. 29, 1975).

[9] 42 U.S.C. § 1973aa-1a(a).

[10] *See* S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 797.

[11] *See* 42 U.S.C. § 1973b(b).

[12] S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 798; *see also id.* at 9, *reprinted in* 1975 U.S.C.C.A.N. 775 (section 4(f)(4) applies to areas "where severe voting discrimination was documented" against language minorities). Specifically, "the more severe remedies of title II are premised not only on educational disparities" like the less stringent provisions under title III of the 1975 amendments, "but also on evidence that language minorities have been subjected to 'physical, economic, and political intimidation' when they seek to participate in the political process." 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards).

[13] The nineteen covered jurisdictions include: American Indian coverage in Apache, Coconino, Navajo, and Pinal Counties in Arizona; Spanish Heritage coverage in Kings, Merced, and Yuba Counties in California; Spanish Heritage coverage in Collier, Hardee, Hendry, Hillsborough, and Monroe Counties in Florida; Spanish Heritage Coverage in Clyde and Buena Vista Townships in Michigan; Spanish Heritage coverage in Bronx and King Counties, New York; American Indian coverage in Jackson County, North Carolina; and American Indian coverage in Shannon and Todd Counties, South Dakota. Coverage determinations were published at 40 Fed. Reg. 43746 (Sept. 23, 1975), 40 Fed. Reg. 49422 (Oct. 22, 1975), 41 Fed. Reg. 784 (Jan. 5, 1976) (corrected at 41 Fed. Reg. 1503 (Jan. 8, 1976)), and 41 Fed. Reg. 34329 (Aug. 13, 1976).

[14] *See* 28 C.F.R. § 55.7(a).

[15] Natalie Landreth & Moira Smith, VOTING RIGHTS IN ALASKA 1982-2006, at 3, 8.

[16] Ibid. at 12, 23.

[17] Ibid. at 27-28.

[18] Ibid. at 32-36.

[19] Ibid. at 26.

[20] Ibid. at 25.

[21] DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO ET AL., VOTING RIGHTS IN ARIZONA 1982-2006, at 4, 17, 54, 56-57 (2006).

[22] Ibid.

[23] Tucker & Espino et al., at 4, 17, 54-57.

[24] Tucker & Espino et al., at 5, 17, 50-54.

[25] United States v. Arizona, No. CIV.-94-1845, 1994 U.S. Dist. LEXIS 17606 (D. Ariz. 1994); United States v. Arizona, No. CIV-88-1989-PHX-EHC (D. Ariz. 1989) (consent decree amended Sept. 27, 1993).

[26] NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS (NALEO) EDUCATIONAL FUND, 2005 NATIONAL DIRECTORY OF LATINO ELECTED OFFICIALS.

[27] *See* David H. Hunter, *The 1975 Voting Rights Act and Language Minorities*, 25 CATH. U. L. REV. 250, 254-57 (1976).

[28] Census 2000, STF-3 and STF-4 data.

[29] NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, PROTECTING MINORITY VOTERS: THE VOTING RIGHTS AT WORK 1982-2005, at map 8 (2006) ("NATIONAL COMMISSION REPORT"). The 105 objections affected nearly 30 percent (72) of Texas's counties, where 71.8 percent of the state's non-white voting age population reside. *See id.* at Map 5I.

[30] *See* NATIONAL COMMISSION REPORT, at Table 4 and Map 7.

[31] *See* NATIONAL COMMISSION REPORT, at Table 5.

[32] *See* 42 U.S.C. § 1973aa-1a(b)(2).

[33] *See generally* 42 U.S.C. § 1973aa-1a(b)(3)(B) (defining "limited-English proficient" as the inability "to speak or understand English adequately enough to participate in the electoral process"). The 1992 House Report explains the manner in which the Director of Census determines the number of limited-English proficient persons:

> The Director of the Census determines limited English proficiency based upon information included on the long form of the decennial census. The long form, however, is only received by approximately 17 percent of the total population. Those few who do receive the long form and speak a language other than English at home are asked to evaluate their own English proficiency. The form requests that they respond to a question inquiring how well they speak English by checking one of the four answers provided – "very well," "well," "not well," or "not at all." The Census Bureau has determined that most respondents over-estimate their English proficiency and therefore, those who answer other than "very well" are deemed LEP.

H.R. REP. NO. 102-655 at 8, *reprinted in* 1992 U.S.C.C.A.N. 772.

[34] U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY: A HANDBOOK FOR STATE AND LOCAL OFFICIALS 1 (Dec. 2004). Because the American Community Survey is part of the census, responding to it is required by law. *Ibid.* at 2.

[35] VRARA § 8.

[36] 42 U.S.C. § 1973aa-1a(b)(4).

[37] *See* Doi v. Bell, 449 F. Supp. 267 (D. Haw. 1978).

[38] *See* 42 U.S.C. § 1973aa-1a(c).

[39] *See* Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) (to be codified at 28 C.F.R. pt. 55) ("2002 Determinations"). Two states that previously were covered in part by Section 203, Iowa and Wisconsin, no longer are covered. *See id.*; 28 C.F.R. pt. 55, App. Section 203 coverage has been extended to political subdivisions of five states not covered previously: Kansas, Maryland, Montana, Nebraska, and Washington. *See* 2002 Determinations, *supra*; 28 C.F.R. pt. 55, App.

[40] *See* Figure C-2 in the Testimony of Dr. James Thomas Tucker (Nov. 9, 2005).

[41] S. REP. NO. 102-315, at 5. The Senate Report also documented the history of educational discrimination against Asian American citizens and American Indian and Alaska Native citizens. *Ibid.* at 5-7.

[42] H.R. REP. NO. 102-655, at 6.

[43] U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, ISSUE BRIEF – ENGLISH LANGUAGE LEARNERS IN U.S. PUBLIC SCHOOLS: 1994 AND 2000 (Aug. 2004).

[44] PAUL J. HOPSTOCK & TODD G. STEPHENSON, DESCRIPTIVE STUDY OF SERVICES TO LEP STUDENTS AND LEP STUDENTS WITH DISABILITIES 3 (Aug. 2003) (commissioned by OELA).

[45] U.S. DEPARTMENT OF EDUCATION, OFFICE OF ENGLISH LANGUAGE ACQUISITION, LANGUAGE ENHANCEMENT AND ACADEMIC ACHIEVEMENT FOR LIMITED ENGLISH PROFICIENT STUDENTS (OELA), SURVEY OF THE STATES' LIMITED ENGLISH PROFICIENT STUDENTS AND AVAILABLE EDUCATIONAL PROGRAMS AND SERVICES 3 (Oct. 2002).

[46] HOPSTOCK & STEPHENSON, at 3.

[47] OELA, at 4, 19 (observing that immigrant students comprised 1.1 million of the 4.5 million LEP students enrolled in the United States and its territories and possessions).

[48] Ibid.

[49] HOPSTOCK & STEPHENSON, at 17.

[50] 414 U.S. 563 (1974). Title VI of the Civil Rights Act of 1964 provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

[51] *See* Castañeda v. Pickard, 648 F.2d 989 (5th Cir. 1981); Serna v. Portales Municipal Schools, 499 F.2d 1147 (10th Cir. 1974).

[52] The EEOA provides that "No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by - (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f).

[53] 34 C.F.R. Part 100.

[54] *See* Appendix A for a summary of these cases. These cases likely represent only a small number of the successful education cases brought because so many of the decisions are unpublished. Nevertheless, the cases provide a compelling basis for concluding that present educational discrimination and the effects of past educational discrimination require extension of the language assistance provisions.

[55] 6:71-CV-5281 (E.D. Tex. 2006) (pending motion for further relief for alleged violations of consent decree).

[56] *See* Moore v. State of Alaska, Case No. 3AN-04-9756-CIV (Alaska Superior Ct.) (alleging that "every Alaska child receives an inadequate education because the funding of that education is grossly inadequate").

[57] *See* Leslie v. Board of Education for Illinois School District U-46, 379 F. Supp.2d 952 (N.D. Ill. 2005) (denying motion to dismiss case brought under the EEOA on behalf of LEP Hispanic students and African-American students).

[58] Flores v. State of Arizona, 405 F. Supp.2d 1112 (D. Ariz. 2005) (contempt order).

[59] League of United Latin American Citizens et al. v. Florida Board of Education, Case No. 90-1913-Civ.-Scott (S.D. Fla. 1990) (consent decree) and Case No. 90-1913-Civ.-Moreno (S.D. Fla. 2003) (amending consent decree).

[60] Bilingual Master Parents Advisory Council v. Boston School Committee, 2002 WL 992541 (Mass. Super. Ct. May 15, 2002).

[61] CHE v. Denver Public Schools, a 1983 case resolved by consent decree after the United States Department of Justice intervened in 1999, 1999 WL 33300905.

[62] Seattle School District et al. v. State of Washington, Case No. 81-2-1713-1 (Thurston Cty. Sup. Ct. 1983) ("Seattle II").

[63] Kasayulie v. State of Alaska, Case No. 3AN-97-3782-CIV (Alaska Superior Ct. 1999).

[64] Case No. 85-6924 (E.D. Pa. 1986) (consent decree continued by stipulation in 2001).

[65] 851 F. Supp. 905 (N.D. Ill. 1994), *aff'd in part and rev'd in part*, 111 F.3d 528 (7th Cir. 1997).

[66] 405 F. Supp.2d 1112 (D. Ariz. 2005).

[67] 160 F. Supp.2d 1043, 1044 (D. Ariz. 2000).

[68] Flores v. State of Arizona, Case No. No. CIV. 92-596-TUC-ACM (D. Ariz.).

[69] Flores v. State of Arizona, 172 F.Supp.2d 1225 (D. Ariz. 2000).

[70] 160 F. Supp.2d 1043, 1044 (D. Ariz. 2000).

[71] National Conference of State Legislatures, "Arizona English Language Learner Cost Study" (Feb. 2005). The NCSL study proposes funding significantly less than what the Arizona State Senate previously found in 2001, when it estimated an annual cost of $170 million (compared to the existing $20 million) was needed to comply with *Flores*, when education costs were lower. A panel of ELL experts from Arizona recommended spending that based on grade level, ranging from annual costs of $1,785 per ELL student in K-2, to $1,447 in grades 3012. The ELL experts proposed the differential in funding levels because they believed that earlier investment would result in greater proficiency and lower costs later on. The panels further found that the ELL programs could be improved by establishing clearer oversight and accountability, placing ELL specialists in schools to work with staff, and providing native language support programs in schools with large ELL populations.

[72] 2005 WL 3455102, at *2.

[73] Ibid.

[74] Ibid.

[75] *See* ACCESS, Project of the Campaign for Educational Equity, Teachers College, Columbia University (visited Mar. 11, 2006), at http://www.schoolfunding.info/news/litigation/2-28-06azellcoststudy.php3.

[76] Arizona uses a standardized test called the "AIMS test," which ranks students in four categories: "exceeds the standard," "meets the standard," "approaches the standard," and "falls far below the standard."

[77] Pat Kossan. "Arizona Students Lag on National Test." Arizona Republic (October 20, 2005).

[78] To date, interviews have been completed with over 120 ESL providers in 23 cities in 16 states. The data provided below comprises the most complete data available from the adult ESL providers in the identified cities.

[79] Telephone interview of Jorge Thomas, Director of ESL services at Catholic Charities (Apr. 24, 2006).

[80] Telephone interview of Kenny Tamarkin, Executive Director of the Massachusetts Coalition for Adult Education (Apr. 24, 2006) (citing data from a database maintained by the Massachusetts Department of Education); Telephone interview of Joanne Arnoud, Director of the Boston Adult Illiteracy Fund (Apr. 18, 2006).

[81] Telephone interview of Jane Miller, Colorado Department of Education (Apr. 21, 2006).

[82] Telephone interview of Dimi Jefferis, Language and Literature Program Coordinator for the Community College of Southern Nevada (Apr. 25, 2006).

[83] Telephone interviews of Elyse Barbell, Executive Director, and Venu Thelakkat, Director of ALIES and Data Analysis, Literacy Assistance Center of New York (Apr. 28, 2006); Telephone interview of Casey Williams, ESL Program Director at the Forest Hills Community House in Jackson Heights/Queens Borough (Apr. 27, 2006).

[84] Telephone interview of Kathy Price, Rio Salado Community College (Apr. 18, 2006).

[85] Telephone interview of Jean Devine, Director of Unlimited Potential (Apr. 28, 2006).

[86] Telephone interview of Elizabeth Jardine, Office of Adult Education at the Rhode Island Department of Elementary and Secondary Education (Apr. 18, 2006).

[87] Telephone interview of Nazneen Rahman, Director of Educational Services at the International Institute of Rhode Island (Apr. 21, 2006).

[88] Ibid.

[89] Telephone interview of Casey Williams, ESL Program Director at the Forest Hills Community House in Jackson Heights/Queens Borough (Apr. 27, 2006).

[90] For example, in the 1988 general election in Sandoval County, New Mexico, although 62.7 percent of all ballots included votes on referendum issues, only 7.4 percent of Native American ballots included votes for those issues. S. REP. NO. 102-315 at 9. Similarly, in the County's 1984 election, only 4 percent of eligible Native American voters cast absentee ballots, compared to 26 percent of eligible white voters. *Id.*

[91] 42 U.S.C. § 1973aa-1a(a).

[92] DR. JAMES THOMAS TUCKER & RODOLFO ESPINO ET AL., MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS: EXECUTIVE SUMMARY 21 (Mar. 2006).

[93] Ibid.

[94] DR. JAMES THOMAS TUCKER & RODOLFO ESPINO ET AL., MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, appendix C (Mar. 2006); VOTING RIGHTS IN ARIZONA 1982-2006, at 13-14.

[95] U.S. CENSUS BUREAU, Table 4a, Reported Voting and Registration of the Total Voting-Age Population by Sex, Race and Hispanic Origin: November 2004.

[96] 42 U.S.C. § 1973aa-1a(d).

[97] 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards).

[98] MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, at chapter 6.

[99] S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE 1984 GENERAL ELECTION 11-12 (1986) ("1984 GAO Study"); .S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: ASSISTANCE PROVIDED AND COSTS 1, 33 (1997).

[100] MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, at 107, 116-17.

Appendix A

Successful English Language Learner (ELL) Cases, by State.

State	Case Name and Court*	Year	Key Findings
AK	*Kasayulie v. State of Alaska* (Alaska Superior Ct.)	1999	Court granted plaintiffs' motion for partial summary judgment, concluding that Alaska has a dual, arbitrary, unconstitutional, and racially discriminatory system for funding school facilities.
AZ	*Flores v. State of Arizona* (D. Ariz.)	2005	Issued contempt citation fining Arizona a minimum of $500,000 per day until it remedied a continuing six-year failure to comply with federal court order requiring establishment of sufficient funding for ELL programs for Spanish-speaking students. Court suspended standardized test requirement for graduation for ELL students, who were denied equal opportunity to pass because of under-funding of ELL programs.
CA	*Comite De Padres De Familia v. O'Connell* (Cal. 3d Cir.)	2004	Order terminating 1985 ELL consent decree entered into by the State Board of Education. Plaintiffs were a group of Mexican-American organizations who sued the State for failing to comply with state and federal laws mandating instruction in a language understandable to ELL students. The consent decree required the defendants to monitor implementation of bilingual education programs for LEP students, including on-site reviews, compliance reports, and remedying any violations found. In August 2002, the court granted the defendants' motion to terminate the decree, but found that the defendants' showing was "disappointing, and even offensive" and was if they had "reached back into two decades if files, and dusted off their old, hackneyed, and ineffective arguments against a consent decree…" Nevertheless, the court concluded that the defendants "have, at last been dragged kicking and screaming into substantial compliance." In 2004, the court of appeals affirmed the termination order.
CA	*Lau v. Nichols* (N.D. Cal.)	1993	Amendments to 1983 consent decree remedying inadequate ELL programs for Chinese-speaking students identified by the United States Supreme Court in 1974.

State	Case Name and Court*	Year	Key Findings
CO	*CHE v. Denver Public Schools*	1999	1983 case resolved by consent decree after the United States Department of Justice intervened following a 1997 Office of Civil Rights (OCR) investigation. OCR found that the Denver Public Schools failed to provide necessary language services to 13,000 ELL students. The consent decree requires the district to remedy Title VI violations, to implement an effective program of language services and instruction, and to properly train teachers to instruct ELL students.
CO	*Keys v. School District No. 1* (D. Col.)	1983	Court held that a Denver public school district failed to meet the second *Castañeda* requirement by not adequately implementing a plan for language minority students.
FL	*League of United Latin American Citizens et al. v. Florida Board of Education* (S.D. Fla.)	2003	Amendments to 1990 consent decree remedying the failure to identify ELL students, provide them with equal educational opportunities appropriate to their level of English proficiency, academic achievement, and special needs. Original consent decree modified by providing for education, training, and certification of ESOL instructors upon the plaintiffs' motion to enforce the decree.
ID	*Idaho Migrant Council v. Board of Education* (9th Cir.)	1981	Action brought by non-profit representing Idaho public school students with limited-English proficiency seeking equitable relief for state agency's failure to ensure that local school districts provided instruction addressing their linguistic needs. The Court of Appeals held that the State Board of Education and other defendants were empowered under state law and required by federal law to address the needs of LEP students.
IL	*Gomez v. Illinois State Board of Education* (7th Cir.)	1987	Court held that Spanish-speaking LEP students adequately stated a claim under the EEOA in action to compel state board of education to establish minimum guidelines for identifying and placing LEP children where the plaintiffs alleged that no bilingual instruction was provided.
IL	*People Who Care v. Rockford Board of Education, School District # 205* (N.D. Ill.)	1994	Court held that school district discriminated against Spanish-speaking LEP students by providing unequal educational opportunities, failing "to adequately identify and assess students who were in need of bilingual services," segregating LEP students from the rest of the student population, providing unequal transportation compared to non-LEP students, and the failure to provide adequate special education courses to LEP and non-LEP students. The Court cited substantial evidence of educational discrimination against ELL students gathered by the Office of Civil Rights.

State	Case Name and Court*	Year	Key Findings
MA	*Bilingual Master Parents Advisory Council v. Boston School Committee* (Mass. Super. Ct.)	2002	The School Department materially breached a 1992 *Lau* agreement as to student-teacher ratios, high school clusters, Goal 7 reports, and funding. The Court ordered the Department to remedy the violations of the agreement by July 2002, unless the Department repealed its bilingual education program. If it repealed the program, the Department would be subject to suit by the parent organization.
MA	*Morgan v. Kerrigan* (D. Mass.)	1975	In connection with court-ordered school desegregation plan, Boston school department was required to provide bilingual instruction where 20 or more kindergarten students attending a school were in need of that instruction.
MT	*Heavy Runner v. Bremner* (D. Mont.)	1981	In action brought by limited-English proficient Blackfeet Indian students, the Court held that material fact issues existed on claims brought under the Equal Educational Opportunities Act (EEOA) and Title VI of the Civil Rights Act of 1964, including: the number of LEP students and the degree of impairment; the instructional programs available to the students; future programs designed to remedy language impairment.
NM	*New Mexico Ass'n for Retarded Citizens v. State of New Mexico* (10th Cir.)	1982	In a class action brought against the State of New Mexico and public education providers, the Court found a violation of Section 504 of the Rehabilitation Act involving "language handicapped" students. The Court concluded that "prescribed discrimination occurs when non-English speaking students derive fewer system benefits than their English speaking classmates, even where the education programs serving the students are administered 'evenhandedly.'"
NM	*Serna v. Portales Municipal Schools* (10th Cir.)	1974	Holding that school district's failure to provide English language instruction to Spanish surnamed students and the failure to hire Spanish surnamed school personnel in district comprised of 35 percent Spanish surname pupils violated Title VI of the Civil Rights Act of 1964.
NY	*Aspira of New York, Inc. v. Board of Education of the City of New York* (S.D.N.Y.)	1975	Post-judgment order following 1974 consent decree granting relief to Spanish-speaking ELL students for *Lau* violations. Court held that students to be included in bilingual program were all of those who scored below the 20th percentile on English version of language assessment battery test.

State	Case Name and Court*	Year	Key Findings
NY	*Cintron v. Brentwood Union Free School District* (E.D.N.Y.)	1978	Judgment for Puerto Rican and other Hispanic students in action challenging school program that failed to identify English deficient LEP students, had no training program for bilingual teachers and aids, failed to provide method of transferring students out of ELL program when necessary level of English proficiency was reached, and failed to encourage contact between non-English speaking and English-speaking students.
NY	*Jose P. v. Ambach*, *United Cerebal Palsy (UCP) v. Board of Education*, *Dyrcia S. v. Board of Education* (E.D.N.Y.)	1979	Three separate class actions in New York City, including one brought on behalf of Hispanic children, for the school board's failure to properly classify special needs children and provide appropriate education. The consolidated order required the school board to identify all students with disabilities by language, provide bilingual education services to LEP students, engage in outreach to LEP students and their families in their native languages, and to recruit, hire, and train adequate bilingual staff.
NY	*Rios v. Read* (E.D.N.Y.)	1978	Action by Spanish-speaking students of Puerto Rican ancestry. The Court held that the school district violated *Lau* because it did not keep students in ELL program until they attained sufficient proficiency in English to be instructed along with English-speaking students.
NY	*United States v. City of Yonkers*	2000	In a desegregation action brought on behalf of racial, ethnic, and language minority students, the Court found that "vestiges of segregation existed in the Yonkers public schools as of 1997 with respect to academic tracking, disciplinary practices, administration of special education programs, pupil personnel services, and services for LEP students." The Court also concluded that racial disparities in achievement scores were directly attributable to the segregated system.
OH	*Lorain NAACP v. Lorain Board of Education* (N.D. Ohio)	1992	In a desegregation case brought on behalf of African-American and Hispanic students, the 1984 consent decree required "retaining an independent contractor to evaluate Lorain's bilingual programs, eliminating shortcomings discovered in the evaluation process, and adequately maintaining bilingual programs for Hispanic students in compliance with state and federal law" and increasing the number of minority teachers, among other relief. In 1992, the Sixth Circuit affirmed an expansion of the consent decree to require greater expenditures by the state.

State	Case Name and Court*	Year	Key Findings
PA	*Y.S. v. School District of Philadelphia* (E.D. Pa.)	2001	Class action brought on behalf of 6,800 Asian students. Y, one of three named plaintiffs, was a Cambodian refugee enrolled in English-only ESOL courses who was placed in a class for mentally handicapped students after failing to make progress for three years. The 1986 consent decree required the school district to review all placements of LEP Asian students, including assessment and communication in their native language, revisions to ESOL curriculum, recruitment and training of ELL instructors fluent in Asian languages, and all communications with parents in their native languages. The decree was continued by stipulation in 2001.
TX	*Castañeda v. Pickard* (5th Cir.)	1981	In an action brought by Spanish-speaking Mexican-American children and their parents, the Court held that the school district's bilingual education and language remediation programs were inadequate with respect to in-service training of teachers for bilingual classrooms and in measuring progress of students in the programs.
TX	*United States v. State of Texas* (E.D. Tex.)	1981†	Following a bench trial, in 1981 the Court found that the state defendants had violated the Equal Protection Clause of the 14th Amendment, Title VI of the Civil Rights Act, and EEOA by having a "grossly inadequate" means to monitor bilingual education for Mexican-American ELL students, resulting in deficient educational opportunities. The parties subsequently entered into a Consent Decree to remedy the violations. In February 2006, the GI Forum and LULAC filed a Motion for Further Relief, alleging widespread violations of the consent decree by the state defendants, which resulted in high drop-out and testing failures by LEP Spanish-speaking students, ninety percent of whom were Native-born.
WA	*Seattle School District et al. v. State of Washington* (Thurston County Superior Ct.)	1983	The Court held that transitional bilingual education, along with other special public school programs, is part of basic education. Therefore, the State of Washington was required to fund the bilingual education program to ensure that all ELL students received services.

* Citations are included at the end of this report.

† A motion to enforce the consent decree is pending.

Alaska:

Kasayulie v. State of Alaska, Case No. 3AN-97-3782-CIV (Alaska Superior Ct. 1999)

Arizona:

Flores v. State of Arizona, 405 F. Supp.2d 1112 (D. Ariz. 2005) (contempt order)

Flores v. State of Arizona, 2001 WL 1028369 (D. Ariz. June 25, 2001) (order granting plaintiffs' post-judgment petition for an injunction)

Flores v. State of Arizona, 160 F. Supp.2d 1043 (D. Ariz. 2000) (order granting plaintiffs' post-judgment petition for relief)

Flores v. State of Arizona, 172 F. Supp.2d (D. Ariz. 2000) (findings of fact and conclusions of law holding that state's funding of LEP students violated requirements of EEOA)

Flores v. State of Arizona, 48 F. Supp.2d 937 (D. Ariz. 1999) (denying defendants' motion for summary judgment)

California:

Comite De Padres De Familia v. O'Connell, 2004 WL 179212 (Cal. 3d Cir. 2004)

Lau v. Nichols, C-70-0627-LHB (N.D. Cal. 1983) (consent decree, as amended in 1993)

Lau v. Nichols, 414 U.S. 563 (1974)

Colorado:

CHE v. Denver Public Schools, a 1983 case resolved by consent decree after the United States Department of Justice intervened in 1999, 1999 WL 33300905

Keys v. School District No. 1, 576 F. Supp. 1503 (D. Col. 1983)

Florida:

League of United Latin American Citizens et al. v. Florida Board of Education, Case No. 90-1913-Civ.-Scott (S.D. Fla. 1990) (consent decree) and Case No. 90-1913-Civ.-Moreno (S.D. Fla. 2003) (amending consent decree)

Idaho:

Idaho Migrant Council v. Board of Education, 647 F.2d 69 (9th Cir. 1981)

Illinois:

Gomez v. Illinois State Board of Education, 811 F.2d 1030 (7th Cir. 1987)

Gomez v. Illinois State Board of Education, 117 F.R.D. 394 (N.D. Ill. 1987) (certifying class action)

People Who Care v. Rockford Board of Education, School District # 205, 851 F. Supp. 905 (N.D. Ill. 1994), *aff'd in part and rev'd in part*, 111 F.3d 528 (7th Cir. 1997)

Massachusetts:

Bilingual Master Parents Advisory Council v. Boston School Committee, 2002 WL 992541 (Mass. Super. Ct. May 15, 2002)

Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass. 1975)

Montana:

Heavy Runner v. Bremner, 522 F. Supp. 162 (D. Mont. 1981)

New Mexico:

New Mexico Ass'n for Retarded Citizens v. State of New Mexico, 678 F.2d 847 (10th Cir. 1982)

Serna v. Portales Municipal Schools, 499 F.2d 1147 (10th Cir. 1974)

New York:

Aspira of New York, Inc. v. Board of Education of the City of New York, 394 F. Supp. 1161 (S.D.N.Y. 1975)

Jose P. v. Ambach 3 EHLR 551:245 (E.D.N.Y. 1979), *aff'd*, 669 F.2d 865 (2d Cir. 1982), *consolidated with United Cerebal Palsy (UCP) v. Board of Education*, Case No. 79-C-560 (E.D.N.Y. 1979) and *Dyrcia S. v. Board of Education*, Case No. 79-C-2562 (E.D.N.Y. 1979)

Rios v. Read, 480 F. Supp. 14 (E.D.N.Y. 1978)

United States v. City of Yonkers, 123 F. Supp.2d 694 (S.D.N.Y. 2000)

Ohio:

Lorain NAACP v. Lorain Board of Education, 768 F. Supp. 1224 (N.D. Ohio 1991), *aff'd*, 979 F.2d 1141 (6th Cir. 1992)

Pennsylvania:

Y.S. v. School District of Philadelphia, Case No. 85-6924 (E.D. Pa. 1986) (consent decree continued by stipulation in 2001)

Texas:

Castañeda v. Pickard, 648 F.2d 989 (5th Cir. 1981)

United States v. State of Texas, 6:71-CV-5281 (E.D. Tex. 2006) (pending motion for further relief for alleged violations of consent decree)

United States v. State of Texas, 680 F.2d 356 (5th Cir. 1982)

United States v. State of Texas, 523 F. Supp. 703 (E.D. Tex. 1981)

United States v. State of Texas, 506 F. Supp. 405 (E.D. Tex. 1981)

Washington:

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